IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION:29.11.2006

LPA No.485 of 1996

CHIEF DIVISIONAL MANAGER AND OTHERS ...APPELLANTS

VERSUS

SUNITA RANI AND OTHERS ...RESPONDENTS

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.S.NIJJAR

PRESENT: Mr.S.C.Kapoor, Sr.Advocate with
Mr.Ashish Kapoor, Advocate
for the appellants

Mr.N.K.Joshi, Advocate
for respondent no.2.

Mr.V. Ramswaroop, Advocate
for respondent no.3.

VIJENDER JAIN, CJ (Oral)

The appellants-Indian Oil Corporation Ltd. and Oil Selection Board, aggrieved by the impugned judgment dated 21.11.1995 rendered by the

learned Single Judge, have preferred this appeal. The brief facts giving rise to the present appeal may be briefly noticed.

Sunita Rani-respondent no.1, despite her selection was not allotted LPG Distributorship. She accordingly sought the quashing of the order re-advertising the Indane L.P.G. Dealership/Distributorship of Indian Oil Corporation (hereafter referred to as "the Corporation") at Mandi Dabwali, District Sirsa and prayed for allotment of the said Dealership/Distributorship to her being the next/first in the panel. For allotment of Indian Oil Corporation LPG Distributorship, an advertisement was issued on 20.2.1984. Respondent no.1-Sunita Rani as well as Sanjiv Kumar Goyal-respondent no.2 were interviewed for consideration of the distributorship. On 11.6.1985, the Corporation, however, issued a letter of intent (Annexure P-5) in favour of one Vinod Kumar. It was mentioned in the said letter that there were certain complaints against aforesaid Vinod Kumar which were still at the investigation stage. If on enquiry into the allegations, it was found that he is ineligible for Distributorship, the letter of intent would be cancelled. The letter of intent was later cancelled, which was assailed by aforesaid Vinod Kumar by filing CWP No.5106 of 1987. The said writ petition dismissed on 18.1.1988. Thereafter, respondent no.1-Sunita Rani filed the writ petition out of which the present LPA arises claiming that in fact she was at number one in the merit list while the said Vinod Kumar was at No.2. An apprehension was also expressed by respondent no.1 that the Corporation was proceeding to re-advertise the Distributorship. The appellants-Corporation contested the writ petition by taking a stand that in view of dismissal of CWP No.5106 of 1987 filed by Vinod Kumar, the order of the Oil Selection Board had been affirmed.

Consequently, the writ petition was not maintainable. Respondent no.1 was found ineligible as she did not have enough resources and capacity to operate the LPG Distributorship. The claim of respondent no.1 that she had been selected, was also refuted by the Corporation. Sanjiv Kumar Goyal who was one of the applicants for allotment of LPG Distributorship filed a separate CWP No.1988 of 1995 claiming that he was entitled to the allotment of Distributorship. Later he filed Civil Misc. Application for being impleaded as a party in the writ petition filed by Sunita Rani-respondent no.1, which was allowed on 28.2.1995. In the written statement, Sanjiv Kumar Goyal-respondent no.2 claimed that he was at No.1 in the order of merit and respondent no.1-Sunita Rani was at No.2. The stand of the Corporation was that once the letter of intent was issued to Vinod Kumar, the panel of three persons that had been drawn up, stood exhausted and neither respondent no.1 nor respondent no.2 had any right to be heard. The learned Single Judge did not accept the said stand on the ground that the letter of intent (Annexure P-5) shows that the Corporation merely intended to offer the Distributorship at Mandi Dabwali, District Sirsa. Besides certain complaints were still at the investigation stage against said Vinod Kumar. If on enquiry, the allegations were found that Vinod Kumar was ineligible, the letter of intent was to be cancelled. Therefore, there was only an intention to offer. It was subject to certain conditions being fulfilled by Vinod Kumar. It was contingent upon the result of the investigation of the complaints. The result having gone against him, the letter of intent was cancelled. It was found that this did not mean that the other candidates had no right to be considered. Insofar as the other candidates i.e. respondents no.1 and 2 are concerned, it was observed that they had still a right to be

considered for allotment of agency, if they were found eligible and suitable. After considering the matter, it was held by the learned Single Judge that the claim of the empanelled candidates, exluding Vinod Kumar should be considered afresh and if there was any material against them, it should be put to them. After receiving their replies and consideration thereof, the Corporation or the Selection Board was directed to take a fresh decision, in accordance with law.

Sh. S.C. Kapoor, learned Sr. Counsel appearing for the appellants has contended that after the re-advertisement, nothing remains and the direction of the learned Single Judge, insofar as consideration of the case of the respondents is concerned, the same could not have been done. He has also contended that the learned Single Judge, although noted the judgment dated 18.1.1988 rendered by a Division Bench of this Court in CWP No.5106 of 1987, but did not take into consideration the ratio of law laid down in the aforesaid judgment wherein it was held that affording of an opportunity of hearing to the petitioner therein before cancelling the agency cannot be a requirement of either law or any principle of natural justice.

We have perused the impugned judgment of the learned Single Judge. We find no force in the arguments of the learned Sr. Counsel appearing for the appellants. The learned Single Judge took into consideration that as the complaint was in relation to Vinod Kumar and insofar as other candidates were concerned, they had a right to be considered for allotment of agency, if they were found eligible and suitable. It was only on account of the result of the investigation of the complaints in relation to Vinod Kumar that neither the respondent no.1 and nor respondent no.2 were allotted the agency. It was also conceded by Indian Oil Corporation before the learned

Single Judge that no notice of any of the complaints was given to either of them before a decision was taken to re-advertise. The learned Single Judge placed reliance on the law laid down in the case of S.L.Kapoor vs. Jagmohan and others, AIR 1981 S.C. 136 wherein their Lordships observed as under:-

> "The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purposes. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known, the requirements are met."

Therefore, the learned Single Judge directed that the claim of empanelled candidates excluding Vinod Kumar be considered afresh.

We do not feel as to how this direction of the learned Single Judge can be faulted by the appellants. It is too late to grant any relief to the appellants as the learned Single Judge granted an interim stay against the advertisement on 13.1.1988 which was confirmed. The prayer for vacation of interim stay was declined by order dated 20.12.1989. Mr. Kapoor has also contended that the interim order was only with regard to stay against re-advertisement. Once the stay was with regard to the re-advertisement, the consequential benefit will follow if this Court had confirmed the stay. Therefore, on this account also, there is no merit in the submission of the

learned Sr. Counsel appearing for the appellants.

In view of the above, we find no merit in this appeal and the same is dismissed. No costs.

(VIJENDER JAIN)
CHIEF JUSTICE

(S.S.NIJJAR)
JUDGE

29.11.2006
MFK

NOTE: Whether to be referred to Reporter or not:YES/NO